

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

FEB 20 2014

DAVID J. MALAND, CLERK

David E. Mack

Plaintiff,

VS

**PROGRESSIVE FINANCIAL
SERVICES, INC.
CHRISTOPHER HALE
*Defendants.***

Defendants.

Case No. 4:13-cv-544

PLAINTIFF DAVID E. MACK'S AMENDED MOTION TO STRIKE
DEFENDANT PROGRESSIVE FINANCIAL SERVICES, INC.'S MOTION FOR
SECURITY OF COSTS UNDER LR CV-65.1(b)

TO THE HONORABLE UNITED STATES MAGISTRATE JUDGE:

COMES NOW the Plaintiff, David E. Mack, who brings this Motion to Strike Defendant Progressive Financial Services, INC.'s improperly filed Motion for Security of Costs Under LR CV-65.1(b) and in support of his motion states as follows:

1. The Defendant filed its Motion for Security of Costs Under LR CV-65.1(b) on December 18, 2013 [Doc. 6]. When Defendant filed its motion with the court it was accompanied by four exhibits (A,B,C, and D) which were improperly electronically filed as one pdf document rather than as separate exhibits as required by court rules.
2. Local Rule CV-7(h) requires the parties to confer before filing a motion and to attach a certificate of conference with the motion when it is filed as required by Local Rule CV-7(i). Counsel for the Defendant failed to confer or discuss its motion with the Plaintiff until January 10, 2014 which was **over three weeks after the filing of the motion**.

3. Defendant failed to attach a certificate of conference to its motion when it was filed as required by Local Rule CV-7(i).
4. Defendant failed to send a copy of the filed motion to the Plaintiff as required by FRCP 5 yet stated in the certificate of service attached to the motion that service had been made by to the Plaintiff by certified mail when it was not.
5. When Defendant filed its response to Plaintiff's response to the motion it again failed to send a copy of the filed document to the Plaintiff as required by FRCP 5 yet stated in the certificate of service attached to the response that service had been made by certified mail when it was not. [Doc. 20]
6. Defendant has failed to follow numerous rules in filing its motion for security of costs and making proper service of the filing and for the aforementioned reasons Defendant Progressive Financial Services, INC.'s Motion for Security of Costs Under LR-65.1(b) should be stricken from the record.

WHEREFORE, Plaintiff moves this Honorable Court to issue an Order Striking Progressive Financial Services, INC.'s motion for security of costs under LR-65.1(b) from the record.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

The true and correct copy of the foregoing document(s) was sent to the below named party by first class USPS mail.

Dated February 20, 2014



David E Mack

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